IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2067 OF 2005

Mr.Labhubhai D.Chheta ...Applicant

Versus

The State of Maharashtra & Anr. ...Respondents

.....

Mr.P.R.Dave for Applicant.

Mr.K.V.Saste, A.P.P. for Respondent No.1.

Mr.J.M.Shetty for Respondent No.2.

.....

CORAM: A.M.KHANWILKAR, J.

APRIL 15, 2005.

P.C.

1. Heard Counsel for the parties. Perused the record.

2. This Application is for cancellation of anticipatory bail granted by the Sessions Court in favour of Respondent No.2 in respect of offence, which is punishable under Sections 406 and 420 of

the Indian Penal Code. The Sessions Court has showed indulgence in favour of the Respondent No.2, relying on the report submitted by the Investigating Officer, which plainly mentions that the course of investigation indicates that Dinesh Jain, co-accused sold subject diamonds to the Respondent No.2 at a low price. Accepting the said allegation as it is, the Sessions Court observed that it would follow that it was a case of sale and not of entrustment, insofar as Respondent No.2 is concerned. There is nothing on record to suggest that any further investigation after filing of the report dated 4th December 2004 has been undertaken.

3. It was argued by the Applicant that the case of the Respondent No.2 that he has no acquaintance, either with co-accused Dinesh Jain or Arvind Mehta, is falsified from several circumstances; however, it is seen that, that aspect has not been investigated so far, as is fairly accepted by the learned A.P.P. on instructions of the Officer, who is present in Court.

4. According to the Applicant, the statement made by co-accused Dinesh Jain, which is the basis for articulating the allegation as mentioned in the report of the Investigating Officer against the Respondent No.2, is misleading. Whereas, Dinesh Jain, in turn, after receiving the subject diamonds from Arvind Mehta had handed over the diamonds to Respondent No.2, in which case, it is a case of entrustment, for which reason, even the Respondent No.2 would be vicariously liable to be tried along with the co-accused for the alleged offence. However, all these aspects will have to be thoroughly investigated and only when material is collected to indicate the complicity of the Respondent No.2 with the alleged offence, would the Officer be entitled to arrest the Respondent No.2.

5. In addition, it was contended on behalf of the learned A.P.P. that the Respondent No.2 has failed to co-operate with the investigation and did not attend the Police Station inspite of repeated intimations sent to him on 2nd January 2005 and 11th January 2005. Respondent No.2 has offered explanation in the reply filed before this Court.

Although that explanation is not satisfactory in my opinion, for the present, the order that I propose to pass, will meet the ends of justice.

6. On fair reading of the order dated 6th December 2004 passed by the Sessions Court, it would give an impression that the relief granted in favour of Respondent No.2 is only a provisional relief, and not final order on the application. However, according to the Applicant, the Office of the Sessions Court has treated the said Application as finally disposed of.

. Be that as it may, in my opinion, the following order will meet the ends of justice:

(a) On further investigation to be done by the Investigating Officer, if material is collected to indicate complicity of the Respondent No.2 in connection with the alleged offence, the Investigating Officer may proceed to arrest the Respondent No.2 after giving 72 hours advance notice (from intimation given to Respondent No.2 on his residential telephone number or his mobile number) to the Respondent No.2 in that behalf.

. It will be open to the Investigating Officer to send intimation by SMS on the mobile number made available by Respondent No.2. The Respondent No.2 volunteers to furnish his e-mail address as well as the fax number, on which intimation can be given to the Respondent No.2.

(b) The Respondent No.2 shall co-operate with the investigation of the case, and attend the concerned Police Station as and when called upon, without committing even one default.

(c) In case, the Respondent No.2 commits any default, even on a single specified date, it will be open to the Investigating Officer to proceed against the Respondent No.2 in accordance with law.

(d) The Respondent No.2 shall report to the Investigating Officer daily from 2nd May 2005 for a period of one week between 10.00 a.m. to 4.00 p.m. or such other time and place, as may be specified by the Investigating Officer and after one week's attendance, as and when called upon by the

Investigating Officer.

(e) The Investigating Officer shall give acknowledgement to the Respondent No.2 for his attendance made before him. Besides, record the fact about attendance of Respondent No.2 in the Register to be maintained in that behalf.

7. At this stage, Counsel for the Respondent No.2 prays that the time period of Advance notice of 72 hours provided by this Court, be increased, as the Respondent No.2 is resident of Delhi. I see no reason to accede to this request. That prayer is rejected.

8. Application disposed of on the above terms.

A.M.KHANWILKAR, J.